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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,523	08/26/2000	Toshio Nishimura	36856.337	6442

7590 09/18/2002
Keating & Bennett LLP
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EXAMINER

BUDD, MARK OSBORNE

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 09/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 648523	Applicant(s) Nishimura
Examiner M. Budd	Group Art Unit 2834

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8-19-02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-16 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-16 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- *Certified copies not received: _____.

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 7(6-10-02)
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 2834

Claims 1, 2, 5-10, 12, 13, 15 and 16 rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kaida (652), Kaida (698) Ogawa or Kitaka.

Claims 3, 4, 11 and 14 rejected under 35 U.S.C. 102((a)) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kitaka.

Regarding the amendments of paper no 8 (-8-02) and the included comments it is noted that the exclusion of 1.00 (exactly as a ration within the claimed ranges fails to define from the reference structures. Normal manufacturing tolerances would seem to leave the cited prior art structures at $1.00 \pm$ a certain allowable amount, and thus still within the claimed range.

Also, the original disclosure is moot as to how close to 1.00 is critical. The prior art clearly teaches devices within applicants originally claimed and disclosed ranges. Within applicants originally claimed and disclosed ranges. Applicant has not established either unexpected results via extending the prior art ranges, or any reason to exclude 1.00 from the original ranges. Does e.g. a ratio of 1.01 give unexpected results relative to 1.00? What about 1.11? In short, any variations in ratio would seem to be nothing more than optimizing a known structure. Such optimization has long been held to be within the skill expected of the routineer and therefore obvious. Thus, due to manufacturing tolerances the prior art either anticipates the claimed structure; or the differences between the claimed ratios and the prior art would have been obvious to one of ordinary skill in the art.

Application/Control Number: 09/648,523

Page 3

Art Unit: 2834

M BUDD/pj

09/17/02

~~M. J. BUDD~~
~~PRIMARY EXAMINER~~
~~ART UNIT 2834~~